



Zoning Bylaw Working Group

Date: January 5, 2022
Time: 8:30 AM to 10:00 AM
Location: Conducted via remote participation

Attendees: Eugene Benson, Stephen Revilak, Charlie Kalauskas, Christian Klein, John Worden, Pamela Heidell, Stephen Revilak, Mike Ciampa, Ralph Willmer, Jennifer Raitt, Kelly Lynema

Guests: Don Seltzer

DRAFT Minutes

1. Continuation of Zoning Audit, Zoning Bylaw Review, and Recommendations Discussion

Kelly noted that she had shared a draft of amendments proposed by Christian with the meeting agenda (see attachments to the minutes). Pam indicated she is working on text related to resiliency review and will share it when she is ready for feedback.

The Working Group discussed the amendments proposed by Christian. Christian explained that some of these have come up before, some are issues that come before the ZBA repeatedly.

a. **Section 3.2.3 Rules and Regulations: Reduce citation to minimum required**

In the rules and regulations section for the Board, there is an introductory paragraph stating that Zoning Boards of Appeals make their own rules and regulations. This is common with every municipality. In Arlington, there is a whole other set of rules and regs written into the zoning bylaws, which makes it difficult for the Board to write its own rules and regulations since it changes require a 2/3 vote of Town meeting. No other boards in Town have that requirement. This recommendation is to remove the subparagraph.

b. **Definitions: Clarify what area to include in calculation of Half Story**

This amendment clarifies that the floor area is related to the floor area of the attic floor, rather than the floor area of the floor below.

c. **Definitions: Add definition for Building Wall; replace all instances of "Foundation Wall" with "Building Wall" throughout bylaw**

This amendment proposes to replace building wall wherever we see foundation wall, and then establish a definition for building wall.

d. Section 5.3.9 Projections into Minimum Yards: add Porches to consideration

Many people go before the ZBA requesting a Special Permit for a farmer's porch. The ISD interpretation has been that a porch that is open on the side but has a roof is an enclosed entrance and can be established in the front yard setback. The amendment adds the word "porches" in the definition to solve questions about this section.

e. Section 5.4.2 Dimensional and Density Requirements: Clarify determination of what qualifies as a Large Addition

Large addition is 750 square feet or 50% of the floor area, but we don't say "whichever is smaller" or "whichever is larger". The amendment would clarify this.

f. Section 8.1.5 Unsafe Structure: clarify who is qualified to make the determination

There have been cases before the ZBA where a contractor has unilaterally made the decision about the safety of a structure. This amendment clarifies that only the director of ISD or a registered engineer can make that determination.

Discussion

Steve generally agreed with Christian's proposed amendments and concurred that as a member of the ZBA these items came up with regularity. He proposed amending Section 5.4.2 Dimensional and Density Requirements to rearrange the sentence so that "whichever is smaller regardless of location" is closer to the clause to which it refers.

John expressed concern about the proposal for Section 5.3.9 and what under circumstances a porch would be allowed. He asked whether someone who wanted to tear down a house and build something new could build out the new structure to the extension of that allowed open porch. Mike clarified that they could not; the dimensional requirements of the Zoning Bylaw must be met if a home is torn down and rebuilt. The projection does not become the new front setback. A roof structure can be enclosed by right, but if a house is torn down any existing nonconformity goes away.

Regarding the amendment to Section 8.1.5, Gene asked why anyone other than the ISD Director should be allowed to determine that a structure is unsafe. Christian explained that a licensed structural engineer has professional expertise and, if licensed, has a professional duty to act in a proper and honest manner in making these decisions. Mike confirmed that ultimately the call is made by ISD. The Department accepts reviews from structural engineers, but if ISD disagrees with the assessment they reserve the right to challenge it or bring in their own engineers if necessary. Christian agreed to modify the amendment to limit the determination to the ISD Director only.

Regarding the amendment regarding building walls, Gene expressed concern the potential for conflicts between Section 6.2 (Signs) and the amendments regarding building wall. Christian noted that Gene's concern is that the definition of building wall

may create a situation where we have certain signs that may have been installed that would no longer meet the requirements. Gene suggested reviewing the Sign Bylaw to see if anything needed to be changed to avoid this unintended consequence. Gene clarified that by not having the definition, ISD can refer to the building code and the ARB can defer to the idea that signs are regulated. Christian said that the amendment attempts to address the situation by which unenclosed front porches can become multistory enclosed portions of a building. The bylaw allows individuals to put an open porch on the front of the building. There is nothing in the code that doesn't allow that porch to become enclosed and then have an additional floor put on top of it, and then apply for a new front porch and repeat ad infinitum. The ZBA this year began put in a condition that approved front porches can never be enclosed or built upon.

Gene asked if it was possible to just say that if you add on a porch in a front setback it may not later be enclosed. Christian concurred that it would be possible to do that. The current interpretation means that if you have a roof on a porch, you can enclose it and build on it. Mike understood the issue and tension it was causing, but was proposed that a better route would be to work on the definitions of enclosed and unenclosed and achieve the same outcome with less confusion.

Christian will work on this to reflect the feedback. He noted concern about terms used in the zoning bylaw that is not defined, like foundation and building wall, which leaves the bylaw open to potentially problematic misinterpretation. Mike agreed that clarity when reading the bylaw is important. He also wants to avoid misunderstandings or other situations where the building code and the zoning bylaw conflict.

Jenny reviewed the memo shared with the Redevelopment Board on the December 6th meeting. At that meeting, Jenny reported out the Zoning Bylaw Working Group's recommendations to the Board. Recommendations were made about the timeline for when amendments could advance.

Warrant Articles for Annual Town Meeting would include:

- Amending special permit for large additions (Zoning Bylaw Working Group)
- Amending dimensional and parking requirements for multifamily uses (citizen petition)
- Amendments to advance solar ready recommendations (ARB)
- Amendments to allow two-family homes by right in nominally single-family districts where two-family dwellings were historically commonplace (citizen petition)

Jenny asked if the Zoning Bylaw Working Group would be interested in meeting prior to the 1/24 ARB meeting to discuss potential amendments.

John expressed a desire to discuss the amendment to allow two-family homes by right with the Working Group and shared his concerns about allowing more housing. Jenny specified that discriminating against families with children is illegal and a fair housing issue, per federal and state fair housing laws. Steve stated that allowing two-family

homes is a proposal he feels is worth discussing, noting that the Cambridge Planning Board recently was asked to look at ways to eliminate single and two-family only restrictions throughout the entire city. Jenny noted that the warrant had not yet been filed, and that discussion on the amendment should be postponed until the details of the proposal are published in the warrant, which will likely be at the March meeting.

Gene asked Christian if he could work with Mike to revise his amendment regarding building wall and foundation to more narrowly define the amendment.

The Working Group agreed to meet on Wednesday, January 19 at 8:30am to review drafts of the potential ARB warrant articles.

DRAFT

December 17, 2021

Document reflects changes made during 1/5/22 meeting of the Zoning Bylaw Working Group.

At the December meeting of the Zoning Bylaw Working Group, it was recommended that I write out my proposed changes to the Zoning Bylaw. I am proposing changes in six areas:

- Section 3.2.3 Rules and Regulations: Reduce citation to minimum required
- Definitions: Clarify what area to include in calculation of Half Story
- Definitions: Add definition for Building Wall; replace all instances of “Foundation Wall” with “Building Wall” throughout bylaw
- Section 5.3.9 Projections into Minimum Yards: add Porches to consideration
- Section 5.4.2 Dimensional and Density Requirements: Clarify determination of what qualifies as a Large Addition
- Section 8.1.5 Unsafe Structure: clarify who is qualified to make the determination

I have provided some commentary to accompany each recommended change. Please let me know if you have any questions.

Sincerely,

Christian Klein
ZBWG Member, ZBA

- Rules and Regulations: I recommend reducing this section to the essential portion with the elimination of subsection A in its entirety. The text includes an unenforceable provision to require oaths and many other requirements which are included in state law or in the ZBA Rules and Regulations.

3.2.3 Rules and Regulations

The Board of Appeals shall adopt rules and regulations for the administration of its powers and shall file a copy of such regulations with the Town Clerk. The Board's regulations shall include rules for hiring outside consultants.

~~A. The Chair of the Board of Appeals, or in their absence the Acting Chair, may administer oaths, but must do so for hearings involving G.L. c. 40B, summon witnesses and call for the production of papers. All hearings shall be open to the public. The Board of Appeals and all permit and special permit granting authorities shall hold hearings and render decisions in accordance with the applicable time limitations as set forth in G.L. c. 40A §§ 9 and 15. The Board of Appeals shall cause to be made a detailed record of its proceedings which in the case of G.L. c. 40B hearings shall require that all testimony be electronically recorded, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reasons for its decisions, and of its other official actions, copies of all of which shall be filed within 14 days in the office of the Town Clerk and the office of the Arlington Redevelopment Board and shall be a public record, and notice or decisions shall be mailed immediately to the petitioner and to the owners of all property deemed by the Board of Appeals to be affected thereby, including the abutters and the owners of land next adjoining the land of the abutters, notwithstanding that the abutting land or the next adjoining land is located in another city or town, as they appear on the most recent local tax list, and to every person present at the hearing who requests that notice be sent to them and states the address to which such notice is to be sent. Upon the granting of a limited or conditional zoning variance or special permit, the Board of Appeals shall issue to the land owner a notice, certified by the chair or clerk, containing the name and address of the land owner, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted which is set forth in the decision of the Board on file in the office of the Town Clerk. No such variance or permit shall take effect until such notice is recorded in the Middlesex County Registry of Deeds.~~

~~The fee for recording such notice shall be paid by the owner and the notice shall be indexed in the grantor index under the name of the owner of record.~~

~~The concurring vote of all members of the Board shall be necessary to reverse any order or decision of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Bylaw, or to effect any variance in the application of this Bylaw.~~

- Definition of Half Story: I recommend the addition of the indicated text to clarify what building area is included in the calculation of the half story. Areas outside the building wall will no longer count.

Story, Half: A story which is under a gable, hipped, gambrel roof, or other sloped roof with a minimum slope of 2:12, where less than one half the floor area within the building walls, measured from the underside of the roof framing to the finished floor below, has a clear height of 7 feet 0 inches or more.

- Building Wall¹: There has been a lot of confusion regarding the term “foundation wall” which is undefined in the bylaw, but it is used in four places. There have been several attempts over the years to provide a definition, but they have been unsuccessful in addressing the core issue. At the same time, the term “building wall” is undefined and used 16 times in the bylaw. I am proposing to provide a definition for “Building Wall” and change the four references to “Foundation Wall” to “Building Wall”. I believe this will resolve both of these issues.

Building Wall: For the purposes of this Bylaw, the Building Wall shall be the exterior wall of the predominant portion of a building excluding decks, porches, steps, stairs, landings, eaves, chimneys, bay windows, balconies, fire escapes, enclosed entrances, and other similar attached features.

The following are the changes required to replace “foundation wall” with “building wall”.

Building Line, Front: A line drawn parallel to the front boundary of a lot along the front ~~foundation-building~~ wall of a building or through the point on a building closest to the front boundary.

5.3.9 Projections into Minimum Yards

- A. Projecting eaves, chimneys, bay windows, balconies, open fire escapes, and enclosed entrances not more than 25 square feet in floor area or more than one story high which do not project more than three and one-half feet beyond the line of the ~~foundation-building~~ wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Enclosed entrances larger than that allowed above may extend into the minimum yard regulations otherwise provided for the district by special permit. Unenclosed steps, decks, and the like, which do not project more than 10 feet in the front yard, or more than five feet in the side yard beyond the line of the ~~foundation-building~~ wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Unenclosed steps, decks, and the like which do not project more than 10 feet into the required rear yard and are not closer to the lot line than half the size of the required yard, may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built.

5.4.2.B (6) Large Additions. No alteration or addition which increases the gross floor area of a building by 750 square feet or more, or by 50% or more of the building's gross floor area on the date of application for a permit or because of cumulative alterations or additions during the previous two years, shall be allowed unless:

- The addition is constructed entirely within the existing ~~foundation-building~~ walls,

1: “Building Wall” appears in the bylaw 16 times. “Foundation Wall” appears in the bylaw 4 times. Neither term is defined. I am proposing to combine them into a single term, as defined above. I have included all 20 occurrences below.

- Setback: The shortest horizontal distance from the front lot line to the nearest **building wall** or building part not specifically excluded in Section 5.
- Pan Channel Letter: A specific type of sign letter consisting of a metal pan enclosure fabricated in the shape of a letter. The metal pan enclosure is used to house the lighting and electrical components of the letter and can be mounted directly to a **building wall**. The sign face is usually made out of colored plastic and is attached to the metal pan to seal it off from pests and harsh weather.
- Plate line: The uppermost horizontal line of a **building wall** upon which the roof rests.
- Sign, Building Identification: A permanent sign consisting of letters applied to a building wall, engraved into the building material, or consisting of a sculptural relief which contains the name of the building or describes its function, but which does not advertise any individual tenant of the building or any products or services offered.
- Sign, Individual Letter: A cut-out or etched letter or logo which is individually mounted on a **building wall**, or freestanding sign.
- Yard: An open space unobstructed from the ground up, on the same lot with a principal building, extending along a lot line or front lot line and inward to the principal building. The size of a required yard shall be measured as the shortest distance between the line of the **building wall** (or building part not specifically excluded under this Bylaw) and a lot line. Structures that are below the finished lot grade shall not be deemed to occupy required yards.
- Yard, Front: A yard extending for the full width of the lot between the front line of the nearest **building wall** and the front lot line.
- Yard, Rear: A yard, unoccupied except by an accessory structure or accessory use as herein permitted, extending for the full width of the lot between the rear line of the nearest **building wall** and the rear lot line.
- Yard, Side: A yard unoccupied, except by an accessory structure or use as herein permitted, between the line of the **building wall** and a side lot line extending from the front yard to the rear yard. In the case of a lot having no street frontage or a lot of odd shape, any yard that is not a front yard or a rear yard shall be considered a side yard.
- 5.3.9.C: Second story additions within the required front yard setback may extend no more than one foot beyond the existing **building wall**.
- 5.4.2.B(4): Front Yard Minimum Lot Width Requirements and Exceptions. The minimum front yard lot width shall be 50 feet at all points between the front lot line and the nearest **building wall**, except that such minimum front yard lot width shall not apply to (i) any lot excepted under Section 5.4.2(B)(1) or 5.4.2(B)(2) or (ii) restoration of any principal building that existed on a lot or for which a building permit was issued prior to February 1, 1988.
- 6.2.4.C(2) Internally Illuminated Signs. Internally illuminated signs include signs constructed with pan channel letters, preferably without raceways, or internal/indirect halo illuminated channel letters on an unlit or otherwise indistinguishable background on a freestanding sign or **building wall**.
- 6.2.5.D(1) Awning Signs: Must not project above, below, or beyond the edges of the face of the **building wall** or architectural element on which it is located.
- 6.2.5.D(6) Marquee Sign: Must not project above, below, or beyond the edges of the face of the **building wall** or architectural element on which it is located.
- 6.2.5.D(10) Wall Sign: Painted wall signs are allowed on any exterior **building wall** of an individual tenant space or building.
- 6.2.6.C Temporary Signs: Wall Banner: Signs must be mounted on a **building wall** or on T-posts or stakes installed 6 inches or less from the wall.
- Building Line, Front: A line drawn parallel to the front boundary of a lot along the front **foundation wall** of a building or through the point on a building closest to the front boundary.
- 5.3.9.A: Projecting eaves, chimneys, bay windows, balconies, open fire escapes, and enclosed entrances not more than 25 square feet in floor area or more than one story high which do not project more than three and one-half feet beyond the line of the **foundation wall** may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Enclosed entrances larger than that allowed above may extend into the minimum yard regulations otherwise provided for the district by special permit.
- 5.3.9.B: Unenclosed steps, decks, and the like, which do not project more than 10 feet in the front yard, or more than five feet in the side yard beyond the line of the **foundation wall** may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Unenclosed steps, decks,

and the like which do not project more than 10 feet into the required rear yard and are not closer to the lot line than half the size of the required yard, may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built.

- 8.1.3.A: Alteration, reconstruction, extension, or structural change to a single or two-family residential structure that is completely within the existing [foundation walls](#) does not increase the nonconforming nature of said structure.

- Projections into Minimum Yards: The Board has had many cases requesting a special permit to construct a “farmer’s porch” or other large unenclosed porch at the front of a residence. The Board routinely approves these projections into the front yard with the condition that the added portion of the building will not count towards the establishment of the foundation wall in a position closer to the street. We note the “Porch” is not included in this section, and I am seeking to add it. I am also recommending that the first paragraph be split, as there are two separate provisions regarding projections.

5.3.9 Projections into Minimum Yards

- A. Projecting eaves, chimneys, bay windows, balconies, open fire escapes, porches, and enclosed entrances not more than 25 square feet in floor area or more than one story high which do not project more than three and one-half feet beyond the line of the foundation wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Enclosed Porches and enclosed entrances larger than that allowed above may extend into the minimum yard regulations otherwise provided for the district by special permit.
- B. Unenclosed steps, decks, and the like, which do not project more than 10 feet in the front yard, or more than five feet in the side yard beyond the line of the foundation wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Unenclosed steps, decks, and the like which do not project more than 10 feet into the required rear yard and are not closer to the lot line than half the size of the required yard, may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built.
- B-C. Second story additions within the required front yard setback may extend no more than one foot beyond the existing building wall.

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- Dimensional and Density Requirements: The determination of whether a proposed addition is a “large addition” can be made using two different requirements. There is some confusion whether it is the less or more restrictive requirement which applies. I am proposing to indicate that the more restrictive applies. In addition, Inspectional Services has interpreted this section to allow deducting the area of an alteration or addition that falls within the foundation wall from the area considered for the determination of a large addition. I think this is contrary to the bylaw, and the proposed language is intended to get at that concern.

5.4.2 Dimensional and Density Requirements

The dimensional and density requirements in this Section apply to principal and accessory uses and structures in the Residential districts. Additional dimensional and density regulations affecting all districts can be found in Section 5.3.

B. Exceptions to Minimum Lot Area, Minimum Front Yard Lot Width, Frontage, Open Space, Side Yard, and Height Requirements in the R0, R1, and R2 Districts.

(6) Large Additions. No alteration or addition which increases the gross floor area of a building by 750 square feet or more, or by 50% or more of the building's gross floor area, whichever is smaller, regardless of location, on the date of application for a permit, whichever is smaller, regardless of location, or because of cumulative alterations or additions during the previous two years, shall be allowed unless:

- The addition is constructed entirely within the existing foundation walls, or
- The Board of Appeals, acting pursuant to Section 3.3, finds that the alteration or addition is in harmony with other structures and uses in the vicinity.

In making its determination, the Board of Appeals shall consider, among other relevant facts, the proposed alteration or addition's dimensions and setbacks in relation to abutting structures and uses.

- Unsafe Structure: This change is to establish who may make a determination of whether a structure is unsafe. There have been cases where a contractor has removed a portion of a building after determining on their own that the structure was unsafe. This allows that portion of the structure to be rebuilt, when it would not ordinarily be allowed. I am proposing that the determination be made either by a licensed structural engineer or the Director of Inspectional Services to be certain that the proper determination is being made.

8.1.5 Unsafe Structure

Except as covered under Section 8.1.7, any structure determined to be unsafe by the Director of Inspectional Services may be restored to a safe condition, provided such work on any nonconforming structure shall be completed within one year of the determination that the structure is unsafe, and it shall not place the structure in greater nonconformity. A structure may be exempted from this provision by a special permit granted by the Board of Appeals or, in cases subject to Environmental Design Review, Section 3.4., the Arlington Redevelopment Board.